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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,059	12/27/2000	James M. Proper	D/A0433Q	5636

7590

03/11/2003

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EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 03/11/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/749,059

Applicant(s)

Proper

Examiner

Charles Cooley

Art Unit

1723



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____
- 2a) This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-11, and 14-22 is/are pending in the application.
- 4a) Of the above, claim(s) 15-19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 1, 3-9, 11, 14, and 20-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1, 3-11, and 14-22 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). | 6) <input type="checkbox"/> Other: |

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OFFICE ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 SEP 2002 has been entered.

Election/Restriction

2. This application contains claims 15-19 drawn to an invention nonelected with traverse in Paper No. 5. A complete reply to this rejection should include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Specification

3. The abstract is acceptable.
4. The title is acceptable.

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Claim Rejections - 35 U.S.C. § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3, 7, 11, 20, 21, and 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by Chauvin (USP 4,576,089).

The patent to Chauvin (USP 4,576,089) discloses a vessel 17; drive shaft 3; a blending tool having a shank 4 attached to the drive shaft 3 and a collision surface 1; removable connector mechanism 2 pivotally connecting the collision surface 1 to the shank 4 at end regions thereof; pivoting at the connector mechanism 2 varying the height of the tool from the bottom of the vessel (Figs. 2-3).

7. Claims 1, 4, 5, 6, 7, 8, 11, and 20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Flowers (USP 1,366,777).

The patent to Flowers (USP 1,366,777) discloses a vessel 4; drive shaft 5; a blending tool having a shank 6 attached to the drive shaft 5 and a collision surface 10 in the form of a plate; removable connector mechanism 9 in the form of a fastener for pivotally connecting the collision surface 10 to the shank 6 at end regions thereof; arms 8 having one end connected to the shank 6 and the other end connected to the collision plate 10.

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8. Claims 1, 3-9, 11, 14, and 20-22 are rejected under 35 U.S.C. § 102(b) as being anticipated by Marrie (USP 3,916,637).

The patent to Marrie (USP 3,916,637) discloses a vessel 1; drive shaft 7; a blending tool having a shank 9 attached to the drive shaft 7 and a collision surface 22 in the form of a plate spaced from each end of the shank; removable connector mechanism 13 in the form of a fastener for pivotally connecting the collision surface 22 to the shank 9 at end regions thereof; arms 11 having one end connected to the shank 9 and the other end connected to the collision plate 22; pivoting at the connector mechanism 13 varying the height of the tool from the bottom of the vessel (Figs. 4-6); the connector mechanism having a mechanism 19, 20 for fixing the position of the collision surface 22 in preset positions.

9. Claims 1, 3-9, 11, 14, and 20-22 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mahler, II (USP 4,456,382).

The patent to Mahler, II (USP 4,456,382) discloses a vessel 10; drive shaft 22; a blending tool having a shank 29 attached to the drive shaft 22 and a collision surface 80 in the form of a plate spaced from portions of the shank; removable connector mechanism 82 in the form of a fastener for pivotally connecting the collision surface 80 to the shank 29 at outer regions thereof; arms 70 having one end connected to the shank 29 and the other end connected to the collision plate 80; pivoting at the connector mechanism 82 varying the height of the tool (Fig. 4); the connector

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mechanism having a mechanism 85, 86 for fixing the position of the collision surface 80 in preset positions.

Allowable Subject Matter

10. Claim 10 is allowable over the prior art of record.

Response to Amendment

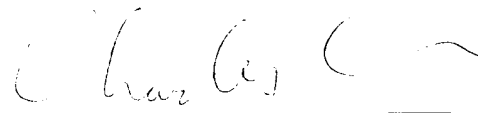
11. Applicant's arguments with respect to the pending claims have been considered but are deemed to be moot in view of the new grounds of rejection necessitated by amendment.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses pivotally mounted blending tools.

Dated: **5 March 2003**



**Charles Cooley
Primary Examiner
Art Unit 1723**